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COURT OF CRIMINAL APPEALS
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IN THE

TEXAS COURT OF CRIMINAL APPEALS

AUSTIN, TEXAS

ISSAC WILLIAMS, *APPELLANT/RESPONDENT*

V.

STATE OF TEXAS, *APPELLEE/PETITIONER*

ON THE STATE'S PETITION FOR DISCRETIONARY REVIEW FROM THE FOURTH COURT OF APPEALS CAUSE NO. 04-17-00815-CR

TRIED IN THE 187TH JUDICIAL DISTRICT COURT, BEXAR COUNTY, TEXAS
TRIAL CAUSE NO. 2014-CR-8370B

APPELLANT/RESPONDENT'S BRIEF

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JUDGES PRESIDING:
HON. RAYMOND ANGELINI –
Motion to Suppress
HONORABLE STEVEN HILBIG -
Pretrial Motions
HONORABLE JOEY CONTRERAS -
Trial

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STATEMENT ON ORAL ARGUMENT

In granting the state's Petition for Discretionary Review, this Court denied oral argument.

STATEMENT OF THE CASE

A jury convicted Williams of continuous trafficking of a person and, on December 7, 2017, sentenced to 50 years in the Texas Department of Criminal Justice. On direct appeal, Williams raised twenty-three points of error. The Fourth Court of Appeals addressed one ground, finding the trial court errored in failing to give the requested lesser-included offense instruction of trafficking of a person.

ISSUES PRESENTED BY THE STATE

Ground One: Did Williams preserve his request for the lesser-included offense of human trafficking when he failed to identify any evidence supporting this request and denied committing any offense?

Ground Two: Did the court of appeals err by concluding that the lesser-included offense of human trafficking was a rational alternative to continuous human trafficking?

Ground Three: Did the court of appeals err by automatically reversing Williams' conviction rather than applying the standard required by *Almanza*?

SUMMARY OF THE ARGUMENT

Williams properly preserved this jury charge error and the Fourth Court of Appeals agreed. Williams' counsel noted that there was an off the record jury charge conference and then formally on the record requested lesser-included offense instructions and argued this was supported by the evidence. Counsel also argued that

these instructions were supported by the record. 7RR7-8. In suggesting that a defendant must point out record evidence to the trial court that supports the lesser-included instruction request, the state is asking this Court to apply a standard of error preservation that this Court has routinely rejected.

For its second ground of error, the state again asks this Court to apply an erroneous standard of review. After a thorough review of the evidence from trial, the Fourth Court appropriately concluded that it was error for the court to deny the requested instruction of trafficking of a person. The state, unlike the lower court's analysis, asks this Court to review only the evidence that supports its theory of the case and asks this Court to reject any single piece of evidence that does not refute or negate elements of the greater charge.

Looking at the record as a whole, there was more than a scintilla of evidence that supported the theory that if Williams was trafficking B.F., he was only trafficking her for less than 30 days.

The state's final ground of review is also without merit. The lower court explained the correct standard for its harm analysis and then conducted a thorough review of the entire record in concluding that the trial court's failure to give the lesser-included instruction of trafficking of person was some harm.

STATEMENT OF RELEVANT FACTS

B.F. communicated over the internet on apps like Facebook and Tagged with complete strangers. 3RR33. According to her, after talking to Williams on Tagged, they finally met in person. 3RR36. Around this time things at home were difficult between her and her mom. 3RR37. Although she claimed she met Appellant on Tagged while using the name "Lolita" in 2013, records showed that the "Lolita" page was not created until June 2014. 3RR113-114. She explained that she had multiple pages on there, but never told the state about her multiple different pages. *Id*. The judge excluded the Tagged records that would have impeached this testimony. 3RR163-166.

Although the judge would not admit the Tagged records, he allowed B.F. to be confronted with the fact that records from Tagged were subpoenaed, yet they showed no communication between her and Appellant. She offered no plausible explanation as to why the records did not support her testimony and merely responded that maybe she had stopped talking with Appellant. 3RR178.

According to B.F., Williams and B.F. arranged to meet in December 2013 at a park in Killeen. 3RR41. She told the jury they sat in his car and talked about her past. 3RR43. B.F. was homeless when she lived in Maryland and lived on the street with her mom and nephew. 3RR44. At 13 years old while living in Maryland, B.F. had "sex for money, so we could get food because we didn't have any money at all."

Id. She didn't want to have sex for money, but she felt like she had to. 3RR44-45. On cross, B.F. explained that on her own at the age of 13 she came up with the idea to start sleeping with men for money in Maryland. 3RR104. She did this while her biological father was in Virginia and her mother worked 24 hours a day. 3RR106. Eventually she moved to Texas.

At their first meeting in December 2013, B.F. claimed that Williams then asked her to have sex in the backseat. 3RR46. According to her, Williams represented that he would take care of her in exchange for sex. 3RR46-47. They then went to a hotel and Williams pulled up a page on his phone that said "adults" and "escorts" and he explained what she was going to be doing. 3RR47. She testified that this made her happy and she voluntarily agreed to do this. 3RR48.

After the initial conversation at the hotel, she met Ameia Cooper but called her "Kandy". 3RR49. According to B.F., Williams took pictures of them in lingerie to put on Backpage. 3RR51. When asked how Backpage worked, B.F. gave a lengthy, very detailed explanation. 3RR51. According to her testimony, B.F. began escorting the week after meeting Williams in December 2013. Sundays were the only days off when they went to church. 3RR58.

According to B.F., she communicated with Williams via text message and used code for whatever service and time the client wanted. She testified that they went other places, such as San Antonio. 3RR71. Before she was detained on August

19th, she had been in Austin and before Austin she had been in San Antonio. 3RR82. She claimed to have been in San Antonio for about two weeks doing her "dates". 3RR83.

At the time she left to start prostituting, she said she was on probation for "stealing out of a car."[1] 3RR77. But, since she was always out of town, she stopped reporting to probation and stopped complying with probation requirements. 3RR78.

B.F. had three phones – one that was hers, one that Appellant bought her, and one that she threw away. 3RR86-87. When she was arrested in the hotel room, two phones were with her. *Id.*

B.F. claimed she had been raped half her life and had been through a lot of trauma. She was in a therapeutic institute in Washington D.C. and in Sheppard Pratt in Maryland. 3RR128. Records and information that was excluded proved that these facilities treated her for severe mental illness. She also received therapy in Killeen. B.F. began running away when she young, "around 10, 11, 12" years old. 3RR131.

Despite having prostituted herself before, she claimed that she did not know what she was doing when she agreed to work with Cooper and Williams. 3RR138. Some days she worked with Cooper and other days she worked alone. Williams, however, "was never around" but Cooper "was always around" psychologically

[1] B.F. did not go on probation until April 2014 and was not on probation in December 2013. Although offered as a Bill of Exception, the judge did not allow this evidence to be admitted through her probation officer.

manipulating her. 3RR137, 139-140. She was in the hotel with Cooper 13 hours a day. 3RR143.

When confronted with the email address krobin209@yahoo.com, which B.F. claimed belonged to Williams, she could not explain why that email address was associated with Cooper's phone number and suggested that they switched phones or switched emails. 3RR149. The rooms were booked under that email address that is associated with Cooper's phone number, not Williams'. She also said that the rooms were booked with gift cards that were registered in Cooper's name. 3RR149-150.

Officers subpoenaed and received over 3,000 pages of ads from Backpage and only 2 of the 3,000 showed Appellant's name on the billing. 4RR15. The email address that posted all the ads was krobin209@yahoo.com. 4RR17. There were a lot of days that did not have ads posted. 4RR20. Officer Hallett agreed that it was possible that the email address that was posting the Backpage ads belonged to someone besides Williams. 4RR15.

Hallett did not know if Appellant's credit cards were being used to purchase the Backpage ads or whether any of his credit cards were used to reserve the rooms. 4RR32-33. Of the seven phones that were seized, they never found out who owned each phone. 4RR39. Hallett never requested any of the phone records. 4RR49.

Hallett did a public record search on www.giftcardbalance.com and learned that gift cards found in Williams' wallet were used to pay for Backpage ads and

some hotel rooms. 4RR52-53, 62. Hallett agreed that there was no way to find out who activated the gift cards or who bought them. 4RR63. Williams explained that he had these gift cards because Cooper asked him to hold them for her because she believed B.F. was stealing from her.

Officer Elizarde explained that the records he received from Backpage produced customer information, like name, address, and billing and cred card information, 4RR85. Elizarde agreed that someone could lie when inputting that information. 4RR85. The first ad he saw on August 13, 2014 was posted by someone named "Kandy" using krobin209@yahoo.com. 4RR86-87.

An August 5, 2014 ad was under Williams' name, but used the krobin209 email. 4RR89-90. It also had the address that was on Williams' driver's license, minus the apartment number. *Id*. at 91.

Elizarde subpoenaed the krobin209 email records and learned the email was set up by "Kandy Robinson" and was associated with the email tailz286@gmail.com. 4RR107-108. The phone number associated with the krobin209 email was also Cooper's number from the Backpage ad. 4RR109. Elizarde agreed that the email address that placed all the ads belonged to Cooper. 4RR117. Elizarde did not look through all the ads to determine how many were attributed to Appellant. 4RR120. He did not know who posted the ads. 4RR134. Elizarde had no knowledge who was using the different phones either. 4RR156.

Christopher Hill, head of the Victoria Police Department's cybercrimes unit did forensic inspections of the cell phones. 4RR238, 241. Some of the devices were not compatible with the software he used, so he could not do a forensic download on all the devices. Some devices contained SIM and SD cards. Other phones he could only take photos of the contents.

He labeled the phones devices 1-7. Device 4 was found in the hotel room and was associated with the (254) 245-2663 number, which belonged to Cooper. 4RR250.

Device number 7 was associated with phone number (254) 449-1764 and was found in Appellant's vehicle. 4RR254. Device 4 contained text messages with device number 7. 4RR254; State's Exhibit 5. Device 7 was a Motorola flip phone and he could not download the phone contents, but he took photographs of the phone. 4RR278. In the contacts was the name "Lee" with the number (254)393-5060, which was device number 5 and belonged to B.F. 4RR281. It also had "Liqe" in the contacts which was the number associated with device 4, Cooper's phone. 4RR284.

Device 6 was a Samsung Galaxy S5. 4RR259; State's Exhibit 38. This device was communicating with B.F. through the "Heywire app". 4RR261-262. Some messages from December 2013 purported to be from "Issac from" Facebook and this person also asked B.F. for her address. 4RR263. In the contacts was "Kandy" with the number (254) 245-2663. 4RR269. The krobin209 email was located in the phone

and so was the tailz286 email under the contact of "Issac Williams". 4RR270. B.F. was also listed as a contact as well. There was evidence in the internet history that the phone had accessed Backpage ads and payment location on Backpage. 4RR272. It was also used to look for hotels. 4RR274.

Hill explained device 4 and 2 shared a SIM card at some point in time. 5RR23-24. They both were associated with Cooper's number – (254)245-2663. 5RR42-43. On July 8, 2014, there was text messages between Cooper and B.F. and one stated "Make sure Issac doesn't" see you. 5RR49-51.

The Defense recalled Hallett. 5RR107. He reviewed the 3,000 pages of ads and agreed that the only email address that was posting the ads was krobin209@yahoo.com. 5RR109. The 3,000 pages consisted of 335 ads and they did not run every day. 5RR110, 112. The ads ran for a period of time and then stopped for a little while and then ran again. 5RR113-114.

Hallett clarified that the phones that were found in Appellant's car were device numbers 1, 2, 6, and 7. 5RR122. None of the phones had any messages that explicitly discussed prostitution or sex for a fee. 5RR125. Williams' name associated with ads "posted or refreshed" 25 times. 5RR138. The ads with Williams' name only ran from July 20th through August 7th, which came after the July 8th text between B.F. and Cooper where Cooper told B.F. to not let Williams see her. 5RR139.

Williams' counsel made a bill of exception to evidence that was excluded, explaining he was prevented from introducing evidence that went to the "truthfulness, the character, and mental health of the complaining witness" and that would establish Appellant's innocence. 6RR6. These records also established B.F.'s motive, character, and truthfulness and prevented him from presenting his defense, which included B.F.'s mental conditions and consistent lies, false reports, and that she "cried wolf" many times. 6RR7.

B.F. was called to testify outside the presence of the jury. 6RR28. She was placed in two separate facilities and was at the Psychiatric Institute of Washington for approximately six months. She was given medicine that made her suicidal and she tried to jump off a three-story building. 6RR30-31, 34. At that time she was diagnosed with severe depression and later diagnosed with bipolar disorder. 6RR30-31. She was also at Sheppard Pratt for about three weeks for severe depression and bipolar disorder. 6RR31-32. In August 2014, she was taking Abilify she said for her bipolar disorder. This testimony was contradicted by Dr. Pugliese's report, which the court excluded, that stated she was not on her meds. After moving to Texas, she alleged she was abducted, thrown in a van, and gang-raped by five or six men. A medical exam revealed no evidence to support this claim and she then refused to talk about it. 6RR36-37. She also alleged that Williams looked just like one of those men. 6RR36.

When she was arrested for burglarizing a car, which was before April 3, 2014, she was living with her mother. She agreed that she saw Dr. Pugliese on April 3, 2014. When she was first placed on probation on April 22, 2014, she was reporting and attending her classes and still living with her mother. 6RR47. She complied with her 7 p.m. curfew that probation required at the time. 6RR48. She agreed that she was not with Williams or Cooper during this time—despite this being the time listed in the indictment. 6RR48. She again testified that she was with Williams every day from the first day he took her to the hotel until they were arrested in August 2014. 6RR48. When confronted with the fact that she had previously testified that she was with Appellant from January 1, 2014 until they were arrested, she said she did not recall the dates. 6RR48-49.

The judge would not allow the defense to subpoena the juvenile officer to establish when she was reporting and complying with probation during the time she testified she was working for Appellant. Her testimony in the Bill of Exception substantially contradicted her previous testimony under oath that she ran away in December 2013 with Williams and Cooper and wasn't living at home, despite agreeing that probation would come to her house and check on her. 6RR56.

The judge ruled that her psychiatric hospitalizations and treatment were not admissible. 6RR60. The court also would not allow the records from a third party to impeach B.F. when she denied that she was in a relationship with Cooper. 6RR62.

But, on cross-examination at punishment, she finally admitted that during the time she was in a relationship with Cooper. 8RR51.

The judge would not allow the testimony regarding the prior rape allegations or the Tagged documents which showed she was still prostituting after Appellant was arrested, even though she denied that she was. 6RR63, 69. This concluded the Bill of Exceptions. None of this testimony was allowed before the jury, yet this testimony would have supported the lesser-included offense because it established that B.F. was wrong on the dates she was being trafficked.

Williams testified that in early 2010, he moved to Pittsburgh, Pennsylvania to live with family and received his associate's degree. 6RR82, 84. He met Cooper in Pittsburgh and after getting laid off, they moved to Killeen where his kids lived. 6RR89. He admitted that tailz286 was his email, but he never used krobin209. 6RR90.

Williams and Cooper moved into an apartment in Killeen around September or October 2013 and lived there until August 2014. B.F. never lived with them. 6RR93. B.F. went to church with them a few times, but not every Sunday. 6RR94.

He denied that he met B.F. on Tagged, but explained they met at a beauty supply store that was near both of their houses. 6RR97, 102. State's evidence of messages between him and B.F. showed that he messaged her that he was "Issac from Facebook"—not from Tagged. 6RR100. After meeting at the hair store, they

all added each other on Facebook. 6RR102. They started talking on Facebook and then exchanged numbers and started texting. He thought that she was cute and that she liked him, so he played along with her, but eventually blocked her on Facebook. 6RR103. He messaged her a few times that he was going to go by her house, but he never actually went. *Id*. In the state's evidence, from the December 21, 2013 conversation about Appellant going to her house, later in the conversation it showed that he never actually went. 6RR104. Cooper and B.F. became friends, so he stopped flirting with her because she was friends with his girlfriend. 6RR105, 107.

He never had sex with B.F., he never created a Backpage user profile, and he never trafficked B.F. 6RR105-106.

Before their arrest, Cooper asked Williams to hold some of her things when she went to meet B.F. because she suspected B.F. was stealing from her. 6RR126. Cooper gave Williams all of the gift cards and a receipt because one gift card was going to get a refund. 6RR130. None of the gift cards were in his name. 6RR131. One of the cards had Cooper's name on it. *Id*. Cooper told him that family was sending her the gift cards. 6RR132. When Cooper gave Williams the receipt for the refund from San Antonio, she told him that she and B.F. had gone to Six Flags. 6RR144-145.

After Williams and Cooper moved to Austin around August 1, 2014, Cooper would leave overnight with B.F. and one time she said they were going to Killeen.

6RR141. Something happened and Cooper could not stay at B.F.'s house, so they got a room down the street. 6RR142. Williams went to pick Cooper up and take her back home. She told him she was not going to talk to B.F. anymore. 6RR145.

The Sunday before they were arrested, Williams and Cooper switched phones. 6RR216-217. That is why the ads on the phone that was in his possession, device 6, did not have any ads posted to Backpage after August 17th. 6RR252-253. The defense then rested.

The State abandoned all counts in the indictment except count one. 6RR158. The Court denied Appellant's request for lesser included charges. 7RR7-8. The jury found Appellant guilty of Continuous Trafficking of Persons. 7RR67.

ARGUMENTS AND AUTHORITIES

I. Response to Ground One: Williams properly preserved his request for lesser-included offenses and the state's Ground One lacks merit.

Williams properly preserved this jury charge error and the Fourth Court of Appeals agreed. The state's argument that a defendant must explain to the trial judge *what* evidence entitles him to a lesser-included charge has long been rejected by this Court and it also does not comport with statutory authority. Further, the state is raising this complaint for the first time in its Petition for Discretionary Review.[2]

[2] In 2010, this Court found that "under the new cases, the State's failure to raise preservation to the court of appeals is no longer a bar to it raising it for the first time in this court in a petition for discretionary review." *Wilson v. State*, 311 S.W.3d 452, 473–74 (Tex. Crim. App. 2010). While *Wilson* explains that case law has eroded prior reasoning that the issue must first be raised and

a. A Defendant is Not Required to Point Out Specific Evidence from the Trial to Be Entitled to a Lesser Included Offense Instruction

It is notable that the State has cited no caselaw to support its theory of error preservation that it now raises. The State has, however, cited appropriate caselaw that establishes that a timely objection and a ruling are the only procedures required to preserve error. This Court has long held that in order to preserve an issue for appellate review, a party must make a timely and specific objection. *Layton v. State*, 280 S.W.3d 235, 238–39 (Tex. Crim. App. 2009). In fact, this same rule is codified in the Texas Rules of Appellate Procedure 33.1(a)(1)(A), the Texas Code of Criminal Procedure 36.14, as well as Texas Rule of Evidence 103(a)(1). TEX. R. APP. P. 33.1(a)(1)(A); TEX. CODE CRIM. PROC. ANN. ART. 36.14; and TEX. R. EVID. 103(a)(1).

> As we stated in *Lankston v. State,* 827 S.W.2d 907, 909 (Tex.Crim.App.1992), "all the party has to do to avoid the forfeiture of a complaint on appeal is to let the trial judge know what he wants, why he thinks he is entitled to it, and to do so clearly enough for the judge to understand him at a time when the trial court is in a proper position to do something about it."

Layton v. State, 280 S.W.3d 235, 238–39 (Tex. Crim. App. 2009).

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considered by lower appellate court, the Fourth Court in this case did ensure that the issue was preserved for appeal, noting: "At trial, his requests for instructions on the lesser-included offenses of human trafficking, compelling prostitution, and prostitution were denied." *Williams v. State*, 582 S.W.3d 612, 623 (Tex. App.—San Antonio 2019, pet. granted).

The Texas Code of Criminal Procedure 36.14 also details what is required to preserve a jury charge complaint for appellate review. A defendant or his counsel "shall" object in writing and specify each ground of objection. Objections dictated into the record satisfy the writing requirement. The objections may embody omissions from the jury charge and the defense is not required to present special requested charges to preserve error. "Compliance with the provisions of this Article is all that is necessary to preserve, for review, the exceptions and objections presented to the charge...In no event shall it be necessary for the defendant to except to the action of the court in over-ruling defendant's exceptions or objections to the charge." TEX. CODE CRIM. PRO. ANN. ART. 36.14.

Despite the statutory language and case law, the state now asks this Court to require a defendant to go beyond the rules and prior caselaw—a requirement this Court has already rejected. Beyond stating the complaint and telling the trial judge what the defendant wants and why he is entitled to it, "there are no specific words or technical considerations required for an objection to ensure that the issue will be preserved for appeal. If the correct ground of exclusion was apparent to the judge and opposing counsel, no waiver results from a general or imprecise objection." *Layton v. State*, 280 S.W.3d at 238–39 (internal citations omitted).

Williams' counsel noted on the record that there was an off the record jury charge conference. Then, formally on the record he requested lesser included offense

instructions and argued they were supported by the evidence. Williams requested lesser included instructions on human trafficking, compelling prostitution, prostitution, and simple assault[3] and argued these instructions were supported by the record. 7RR7-8.

> "MR. SMITH: In this charge, we are asking that the lesser-includeds be placed in the charge. If we go through the definition of the charge, there are elements that we talked about in the informal charge conference: Human trafficking, compelling prostitution, prostitution, and then, there was evidence of a simple assault. So we believe that there is sufficient evidence for the jury to look at any one of those theories and find a lesser-included, and we ask for those charges to be -- the lesser-included --
> THE COURT: Is there -- was there any evidence elicited -- and refresh my memory -- that if he's guilty of any offense, he's guilty of the lesser only and not the greater?
> MR. SMITH: I believe there was in substance." 7RR7-8.

Counsel's requests were timely and clear: he wanted lesser-included offense instructions, he provided specific lesser included offenses that he was requesting, and he noted that he was entitled to the instructions because the lesser-included offenses were supported by the record. Thus, the error was preserved for appellate review. *Layton v. State*, 280 S.W.3d at 238–39.

b. A Defendant May Deny Committing the Greater Offense and Still Be Entitled to a Lesser Included Offense Instruction

[3] Appellant concedes simple assault is not a lesser included offense in this case.

Williams testified in his own defense and lodged a general denial to the offense of human trafficking. This does not, as the state begs this Court to find, automatically bar a defendant from receiving a lesser-included offense instruction. This Court has reasoned that a defendant's denial that he committed an offense standing alone is not adequate to entitle him to the lesser-included offense instruction—there must be more from the evidence to support the requested instruction. The state asks this Court to do what this Court has long rejected—rely solely on the defendant's denial while ignoring other evidence in the record. In *Bignall*, this Court found that a defendant is not entitled to a lesser included if he denies the offense *and* there is no other evidence that he is only guilty of the lesser.

> The court of appeals held that Appellant's evidence indicated he was not guilty of any offense, and therefore, an instruction on theft was unnecessary. However, the court of appeals has misconstrued our caselaw and erroneously focused solely on Appellant's evidence, while disregarding the remainder of the record as noted above. The correct test, as stated in *Aguilar v. State,* 682 S.W.2d 556 (Tex.Crim.App.1985), is as follows: "If a defendant either presents evidence that he committed no offense or presents no evidence, *and there is no evidence otherwise showing he is guilty only of a lesser included offense,* then a charge on a lesser included offense is not required." *Id.* at 558 (emphasis added).

Bignall v. State, 887 S.W.2d 21, 24 (Tex. Crim. App. 1994).

This Court went on to explain in *Bignall* that it is error for a reviewing court to focus solely on an appellant's version and ignore the other evidence from trial in deciding whether a lesser-included instruction is warranted. Bignall, like Williams,

denied committing the offense. "The court of appeals' opinion glosses over this evidence and focuses on Appellant's testimony. Under such an interpretation, anytime a defendant denies the commission of an offense, a charge on a lesser included offense will not be warranted. This is clearly not the law of this state, as this Court has ruled otherwise in *Bell.*" *Bignall v. State*, 887 S.W.2d at 24; *citing Bell v. State*, 693 S.W.2d 434, 437 (Tex. Crim. App. 1985).

Thus, the state is requesting this Court to do exactly what the Court of Appeals erroneously did in *Bignall*: focus only on Williams' testimony and ignore the remainder of the record. As this Court stated, the state "has misconstrued our caselaw." *Id* at 24.

In arguing that this error was not properly preserved in the lower Court, the state is requiring this Court to ignore its prior well-established precedent and statutory requirements of error preservation. Considering these issues are well-settled, this Court should deny the issue raised in the state's Ground One. *Bignall v. State*, 887 S.W.2d at 24; *Bell v. State*, 693 S.W.2d at 437.

II. Response to Ground Two: Based on the record and evidence from trial, the Court of Appeals did not err by concluding that the lesser-included offense of human trafficking was a rational alternative to continuous human trafficking.

Williams was charged with continuous human trafficking and requested lesser included instructions on human trafficking, compelling prostitution, prostitution,

and simple assault[4]. 7RR7-8. "Trafficking of persons…is a lesser included offense of continuous trafficking of persons." *Dukes v. State*, No. 13-14-00731-CR, 2016 WL 1393930, at *8 (Tex. App. Apr. 7, 2016), *pet. refused* (Jan. 11, 2017). "Compelling prostitution is also a lesser included offense of trafficking." *Evans v. State*, No. 06-16-00064-CR, 2017 WL 1089806, at *5 (Tex. App. Mar. 22, 2017), *pet. refused* (Sept. 13, 2017). And engaging in prostitution may be a lesser included offense of compelling prostitution. *Raven v. State*, 533 S.W.2d 773, 775 (Tex. Crim. App. 1976). The distinguishing factor between continuous human trafficking and the lesser charge of human trafficking, is the requirement that two instances of trafficking occur over 30 or more days. TEX. PENAL CODE ANN. § 20A.03(a). The Fourth Court of Appeals did not address Williams's requests for any lesser-included instructions other than trafficking of persons.

A defendant is entitled to have the jury charged on any issue that is supported by the evidence. *Cavazos v. State*, 382 S.W.3d 377, 384 (Tex. Crim. App. 2012). The strength or weakness of the evidence does not determine what charge to give: "if any evidence raises the issue that the defendant was guilty only of the lesser offense, then the charge must be given." *Id.* There are two ways that a defendant may only be guilty of the lesser offense, thus warranting a lesser included jury instruction: "if some evidence refutes or negates other evidence establishing the

[4] Appellant concedes simple assault is not a lesser included offense in this case.

greater offense or if the evidence presented is subject to different interpretations. *Robertson v. State,* 871 S.W.2d 701, 706 (Tex.Crim.App.1993)." *Sweed v. State*, 351 S.W.3d 63, 68 (Tex. Crim. App. 2011). The state wholly ignores the that the evidence presented may be subject to different interpretation and has focused solely on whether the evidence refutes or negates evidence establishing the greater offense.

The threshold showing for a lesser included instruction is low. "'Anything more than a scintilla of evidence is sufficient to entitle a defendant to a lesser charge.' *Bignall v. State,* 887 S.W.2d 21, 23 (Tex.Crim.App.1994)." *Sweed v. State*, 351 S.W.3d at 68. The lower court properly found that there was more than a scintilla of evidence that supported the lesser included instructions in this case. *Williams v. State*, 582 S.W.3d at 627.

After a thorough review of the evidence from trial, the Fourth Court appropriately concluded that it was error for the court to deny the requested instruction. The state, unlike the lower court's analysis, asks this Court to review only the evidence that supports its theory of the case and asks this Court to reject any single piece of evidence that does not refute or negate elements of the greater charge. But this is not the appropriate standard of review.

Looking at the record as a whole, there was evidence that supported the theory that if Williams was trafficking B.F., he was only trafficking her for less than 30

days. For example, evidence from the posts on Backpage showed that Williams' name was only on a few backpage ads that ran from July 20th through August 7th. 5RR139. This time period is less than a month and therefore supported human trafficking and not continuous trafficking. Furthermore, there was a text message between B.F. and Cooper on July 8th indicating that they were concealing something from Williams. Williams also testified that he and Cooper had switched phones—a contention B.F. herself said could have happened. There was also forensic evidence that established several phones had used the same SIM cards and utilized the same numbers.

At oral argument in the Fourth Court of Appeals and in its post-submission brief, the state argued that the Court of Criminal Appeals held in *Cavazos v. State*, that in order to be entitled to a lesser-included offense instruction, the evidence must "affirmatively negate"[5] the greater offense. This is ***not*** what this Court held in *Cavazos v. State,* 382 S.W.3d 377 (Tex. Crim. App. 2012) and the lower Court rejected this analysis. However, the state now in its petition has dropped the words "affirmatively negates" but persists with this same inappropriate analysis.

[5] "According to the State, the 'evidence does not affirmatively negate that Williams took the pictures that featured both B.F. and Cooper [Kandy] in the Backpage ads.' 'Nor does it affirmatively negate B.F.'s testimony that Williams drove her to motels where she had sex for money on every occasion.' We disagree with this analysis by the State." *Williams v. State*, 582 S.W.3d 612, 627 (Tex. App.—San Antonio 2019, pet. granted).

First, the state argues that the invoices on the backpage ads showing Williams' name during a period less than 30 days "only show whose name was entered on the ad purchase. The invoices do not establish which individual entered the name." *State's Brief* at 14.[6] Williams agrees with this statement. However, the state then argues that the invoices are not "directly germane to whether Williams 'trafficked' B.F." *Id*. This evidence is directly germane to whether Williams was only involved in trafficking B.F. for less than 30 days. Furthermore, this argument is irrelevant because there was, as the state noted, other evidence of trafficking (i.e. that Williams drove B.F.). B.F. testified Williams drove her to all the locations. 3RR83-84.

In addition to the testimony that Williams drove B.F. places during this time period, the state's argument that posting an underage girl on a website for sex would not be considered trafficking is flawed. This conduct would fall squarely within the definition of the statute—specifically "provide" [7] another person. TEX. PEN. CODE ANN. 20A.01(4). Posting ads on a website such as backpage would be providing the person in the ad for these types of sexual services.

[6] Appellant raised 22 other points of error that were not addressed by the lower court. One of those grounds argued that the 3,300 pages of backpage ads were not properly authenticated because the state could not prove who posted the ads. Although this issue is not now before this court, the state has conceded this point.

[7] The state argues that the penal code definition of traffic states "provide for", however, the definition only requires that a defendant "provide" another person for the sexual activity. TEX. PEN. CODE ANN. 20A.01(4).

The state also argues that B.F. testified Williams recruited her in December 2013 and these backpage invoices do not refute this. The backpage ads are germane to the issue of less than 30 days, however, there was other evidence that refutes or negates B.F.'s testimony on this issue. Although B.F. testified that she was lured into sex trafficking in December 2013, text messages between Williams and B.F. during this time period show that the phones were messaging each other about how their days were going and about meeting up, but there was no exchange about sex or performing sex in exchange for money in December 2013. 9RR Part 15, 45-58. Thus, there was other evidence in the record that refutes or negates B.F.'s testimony on this issue.[8] Aside from B.F.'s testimony, there was no other evidence that Williams was trafficking B.F. more than 30 days.

The state also, without citing any authority, takes issue with the lower court's reasoning that whether the jury believed the alternative interpretations of the evidence was "immaterial" to whether the lesser offense instruction was warranted.

[8] In one of his other issues not addressed by the Fourth Court of Appeals, Appellant complained that the trial court erred in excluding evidence that would have impeached B.F.'s testimony; namely evidence that established she was on probation during this relevant time period and therefore could not have been trafficked the entire time by Appellant. This excluded evidence established that Appellant was not engaging in this offense, if at all, every day from January 1, 2014 until August 19, 2014 as B.F. testified. The excluded probation evidence established that B.F. was living at home until the end of May at the earliest. Thus, there was excluded evidence that established that if Appellant was trafficking B.F., he may have only done it in a period of time that was less than 30 days. The lower court declined to consider this excluded evidence in its analysis.

> "Specifically, the court of appeals noted that "the likelihood of the jury actually making these conclusions is immaterial to the issue of whether Williams was entitled to an instruction on the lesser-included offense of trafficking of persons." *Williams*, at *23. The court of appeals supported this analysis by noting that a jury is free to disbelieve testimony. *Id.* (citing *Bignall,* 887 S.W.2d at 24; *Booth v. State*, 679 S.W.2d 498, 500 (Tex. Crim. App. 1984)). This analysis is not consistent with the second prong of the lesser-included offense test which requires the evidence amount to a rational alternative that the defendant is guilty only of the lesser offense." *State's Brief* at 17.

The Fourth Court's analysis is consistent with the second prong of the lesser-included test and the Court of Appeals directly relied on this Court's analysis from prior cases reaching the same conclusion. This Court has held that the credibility of the evidence supporting the lesser charge is irrelevant:

> The evidence must establish that the lesser-included offense is a valid, rational alternative to the charged offense. Anything more than a scintilla of evidence is sufficient to entitle a defendant to a lesser charge. **However, we may not consider the credibility of the evidence and whether it conflicts with other evidence or is controverted.**

Goad v. State, 354 S.W.3d 443, 446–47 (Tex. Crim. App. 2011)(emphasis added) (internal citations omitted).

The state seems to argue that the evidence supporting the lesser-included offense instruction must be the only theory the jury is free to believe. This is not the standard. The evidence must be germane to the lesser-included instruction and support the lesser charge even "if the evidence presented is subject to different interpretations. *Robertson v. State,* 871 S.W.2d 701, 706 (Tex.Crim.App.1993)."

Sweed v. State, 351 S.W.3d at 68. Here, the lower court explained alternative interpretations that were supported by the evidence. Thus, it is true that it is irrelevant what the jury would ultimately believe—it is only relevant if the evidence supports the lower charge and is subject to different interpretations.

The second piece of evidence cited by the lower court that the state takes issue with the text message between Cooper and B.F. concealing something from Williams. The state argues that the lower court must not have believed the backpage ads were enough to support the lesser charge "because the court also relied on the text message between B.F. and Cooper indicating that they did not want Williams to be aware of their activity on July 8, 2014 (V R.R. at 50; Vol. 9.16 at 18)." *State's Brief* at 15. But, by considering this other evidence, the lower court was merely doing its job of reviewing the entire record. Again, the state argues that because this one text message does not refute or negate the greater offense, he was not entitled to the lesser-included instruction. However, this evidence is subject to different interpretations and it does negate or refute the greater offense. The evidence shows that the two women were concealing something from Williams. While it could be something innocent, it also could be that they were concealing their nefarious activities from Williams. *See Williams v. State*, 582 S.W.3d at 627.

Finally, the state again takes issue that the Fourth Court of Appeals relied on portions of Williams' denial of any offense. As discussed *supra* his denial does not

prevent him from receiving lesser-included instructions because there was other evidence in the record that did support the lesser offense. *Bignall v. State*, 887 S.W.2d at 24; *citing Bell v. State*, 693 S.W.2d at 437. The lower court was relying on Williams testimony that he and Cooper's phones were merged and the state construes this testimony as a complete denial that does not support the lesser offense. The Fourth Court's reasoning was the jury could have believed this testimony and that is why a phone in his possession had incriminating evidence on it. *Williams*, 582 SW.3d at 628.

This Court has recently rejected this line of reasoning that only views a defendant's denials in a vacuum. In *Kachel v. State*, PD-1649-13, 2015 WL 3543122, at *3–4 (Tex. Crim. App. Mar. 18, 2015)(finding that the analysis not does not turn on "plucking Kachel's" general denials of any wrongdoing out of the record and examining them in a vacuum). In *Kachel*, like in Williams's case, this Court gave alternate scenarios that the jury could have believed.

> And regardless of the likelihood that the jury would have actually made these conclusions—which it is not our role to determine—they nevertheless establish indecent exposure as a valid, rational alternative to indecency with a child by exposure…And given the low threshold of the second step—requiring only anything more than a scintilla of evidence—coupled with our policy of liberally permitting lesser-included instructions, this is true regardless of whether we ourselves would have made the same conclusions listed above.

Kachel v. State, PD-1649-13, 2015 WL 3543122, at *3–4 (Tex. Crim. App. Mar. 18, 2015)(internal citations omitted).

Accordingly, the state has failed to establish that the Fourth Court erred in concluding the lesser-included offense of human trafficking was a rational alternative to continuous human trafficking under the facts in this case.

III. Response to Ground Three: The Fourth Court of Appeals Did Properly Apply the *Almanza* Standard

The state complains that the Fourth Court of Appeals did not conduct the required evidentiary analysis under *Almanza*[9] arguing the "court of appeals reversed Williams' conviction without any review of the evidence or the argument of counsel or any other relevant information." *State's Brief* at 19. However, just preceding its harm analysis, the court thoroughly explained the state of the evidence and why the evidence warranted a lesser included offense. Thus, the court did conduct a thorough review of the entire record. The lower court also explained the correct standard for its harm analysis:

> "Some harm" means actual harm and "not just a theoretical complaint." *Id.* at 449-50. In evaluating whether some harm exists, we "consider the totality of the record," including the "entire jury charge," "the state of the evidence, including the contested issues and weight of probative evidence," "the argument of counsel," and "any other relevant information revealed by the record of the trial as whole." *Id.* at 450.

Williams v. State, 582 S.W.3d at 628; *citing Cornet v. State*, 417 S.W.3d 446, 449 (Tex. Crim. App. 2013).

[9] *Almanza v. State,* 686 S.W.2d 157 (Tex. Crim. App. 1985).

The lower court also found "there was some evidence to support the submission of trafficking of persons" thus, again, indicating the court did review the evidence in the record. *Id*. at 629.

The Fourth Court concluded "the jury charge permitted the jury to either convict Williams of continuous trafficking of persons or to acquit him altogether…the jury was 'denied the opportunity to consider the entire range of offenses presented by the evidence.' *Saunders*, 913 S.W.2d at 571[10]." *Williams v. State*, 582 S.W.3d at 629.

The Court of Appeals did cite to *Saunders* in its analysis, however, this Court also cited to *Saunders* in its more recent *Braughton* case cited by the state. This same language was recently relied on by this Court in weighing the jury charge under *Almanza*:

> We reasoned that the harm from denying a lesser offense instruction stems from the potential to place the jury in the dilemma of convicting for a greater offense in which the jury has reasonable doubt or releasing entirely from criminal liability a person the jury is convinced is a wrongdoer.

Braughton v. State, 569 S.W.3d 592, 614–15 (Tex. Crim. App. 2018), reh'g denied (Jan. 30, 2019)(internal citation omitted).

Thus, in addition to having reviewed the entire record, it is apparent the Fourth Court did review the state of the jury charge as well.

[10] *Saunders v. State*, 913 S.W.2d 564 (Tex. Crim. App. 1995).

Contrary to the state's argument, *Saunders* and *Almanza* are not in conflict with each other. *Almanza* does recognize that a reviewing court must review the entire record, while *Saunders* recognizes that harm can stem from the fact that the jury is stuck with only finding a defendant guilty of a greater charge it had a reasonable doubt about and acquitting the defendant of any offense. *Williams v. State*, 582 S.W.3d at 628; *citing Saunders v. State*, 913 S.W.2d at 571. Thus, the reasoning from *Saunders* is an appropriate factor to consider in conducting an *Almanza* harm review.

Although the lower court did review the entire record in reaching its conclusion and applied the correct standard of review, Williams will address the entire jury charge, the state of the evidence, and argument of counsel as raised by the state.

The Jury Charge

While the jury was properly charge on the offense of continuous trafficking, it failed to instruct the jury on any lesser-included instructions. The jury was only allowed to find Williams guilty of the greater offense or acquit him entirely. *Saunders*, 913 S.W.2d at 571. In cases where this court has found that the jury charge did not weigh in favor of finding harm, this Court has found that where the jury rejected an intervening lesser-included instruction that was given, there may not have been harm. *Braughton v. State*, 569 S.W.3d at 614. ["In *Masterson v. State*, we

recognized that the jury's failure to find an intervening lesser-included offense (one that is between the requested lesser offense and the offense charged) may, in appropriate circumstances, render a failure to submit the requested lesser offense harmless.' 155 S.W.3d 167, 171 (Tex. Crim. App. 2005) (citing *Saunders*, 913 S.W.2d at 572)."]

This is not the issue in Williams' case because no lesser-included offense instruction was provided to the jury. This Court has "routinely found 'some' harm, and therefore reversed, whenever the trial court has failed to submit a lesser included offense that was requested and raised by the evidence—at least where that failure left the jury with the sole option either to convict the defendant of the greater offense or to acquit him." *Saunders v. State*, 913 S.W.2d at 571.

As evidenced by the lower court's review of the jury charge, the entire jury charge weighs in favor of finding harm.

The State of the Evidence

Under its analysis of the state of the evidence, the state only cites to Williams's denial of the offense. *State's Brief* at 23. However, as discussed *supra*, this is not the entire inquiry when considering whether a lesser-included offense instruction was supported by the evidence. *Bignall v. State*, 887 S.W.2d at 24; *Bell v. State*, 693 S.W.2d at 437. And, as the Fourth Court noted, a review of the entire record supported the lesser-included offense instruction.

Overall, the state of the evidence in this case is not overwhelming in favor of the state. For example, B.F. was the main witness against Williams, yet her own testimony was contradictory. On the one hand, she testified that Williams was posting the backpage ads and that Williams always drove her, but she also testified that Williams was never around. Other state witnesses—law enforcement officers—agreed they had no idea who posted the backpage ads. 4RR134. B.F. testified that Williams "was never around" but Cooper "was always around." 3RR139-140. Thus, she only speculated that Williams posted the ads. *See Hooper v. State*, 214 S.W.3d 9, 16 (Tex. Crim. App. 2007). ["Speculation is mere theorizing or guessing about the possible meaning of facts and evidence presented. A conclusion reached by speculation may not be completely unreasonable, but it is not sufficiently based on facts or evidence to support a finding beyond a reasonable doubt...juries are permitted to draw multiple reasonable inferences from the evidence (direct or circumstantial), but they are not permitted to draw conclusions based on speculation."]. The only evidence more than speculation remotely linking Williams to the ads was his name appearing on invoices for the ads for less than 30 days. Furthermore, there was no evidence aside from B.F.'s testimony that Williams recruited her in December 2013. B.F.'s testimony on how she met Williams was also not supported by the evidence. She claimed she met Williams on Tagged while using the name "Lolita" in 2013, but records show that the "Lolita" page wasn't created

until June 2014. 3RR113-114. She explained that she had multiple pages on there, but never told the state about her multiple different pages. *Id*. Although the judge would not admit the Tagged records, he allowed B.F. to be confronted with the fact that records from Tagged were subpoenaed, yet they showed no communication between her and Williams. She responded that maybe she stopped talking with Williams but provided no other explanation for this discrepancy in her testimony. 3RR178.

B.F. also testified that she was forced to do this work daily except Sundays, yet officers agreed there were a lot of days that did not have ads posted. 4RR20. Hallett clarified that the phones that were found in Williams's car were device numbers 1, 2, 6, and 7. 5RR122. None of the phones had any messages that explicitly discussed prostitution or sex for a fee. 5RR125.

Because there was evidence that supported the lesser included offense instruction, the state of the evidence weighs in favor of finding some harm.

Argument from Counsel

In closing, Defense counsel argued that the text message between the two females about not wanting Williams to know what they were doing was reasonable doubt. 7RR42. Counsel further argued that Williams' name did not show up on the ads until after that text message. 7RR46. Counsel also argued that the evidence supports a theory that the girls were doing this without Williams knowing. 7RR47.

The state contends that counsel's pie story was about creating the appearance that his dog ate the pie that he and his friend actually ate proved Williams pursued a defense that he was framed, but at the end of the story counsel said, "[t]his is a circumstantial evidence case." 7RR50. Thus, it appears that counsel's story was about the evidence being circumstantial of Williams' guilt. As a whole, counsel argued evidence that supported reasonable doubt about the greater offense. He generally argued that the jury should acquit because of reasonable doubt about the offense charged. But there was no lesser-included instruction for counsel to argue or for the jury to consider.

Judge Richardson, in a concurring opinion, recognized "by not including the lesser-included offense of indecent exposure in the jury charge, appellant's counsel was precluded from requesting such a compromise verdict from the jury." *Kachel v. State*, PD-1649-13, 2015 WL 3543122, at *6 fn. 1 (Tex. Crim. App. Mar. 18, 2015) (Richardson, J., concurring.) Similarly, Williams's counsel was precluded from arguing for a lesser charge from the jury when that charge was not before the jury. Thus, counsel did the prudent thing and argued reasonable doubt.

Thus, this factor also weighs in favor of some harm.

Other "Relevant" Matters

The evidence presented at trial supported the lesser-included offense instructions. Despite the fact counsel raised the issue of lesser-included offenses

throughout trial, the state seems to argue that pursuing a defensive theory of obtaining an acquittal of the greater charge and not focusing solely on a lesser included charge should preclude a defendant the opportunity of a lesser-included offense instruction. *State's Brief* at 25-27. The state cites no caselaw to support this theory. However, this theory is similar to the state's persistent argument that Williams' denial of committing any offense should preclude him from a lesser-included offense instruction. This theory, as discussed many times *supra*, has been rejected by this Court. *Bignall v. State*, 887 S.W.2d at 24; *Bell v. State*, 693 S.W.2d at 437. It is logical that if a defendant can deny any offense, but still receive a lesser-included offense instruction because it is supported by the evidence, then counsel can advocate that same theory presented by his client's testimony and still be entitled to the lesser-included offense instruction when the evidence supports the instruction. The lesser-included offense instruction does not necessarily turn on the defendant's denial of any criminal offense, but on whether the evidence supports the lesser-included offense instruction. *See id*.

This factor also weighs in favor of some harm.

Almanza Factors Combined

The state cites to *French v. State*, for its argument that there was only theoretical harm because, according to the state, Williams did not pursue a defense strategy that he was only guilty of the lesser-included offense. 563 SW.3d 228, 238

(Tex. Crim. App. 2018). However, *French* is not relevant to this case for multiple reasons. First, the jury charge in *French* centered around a unanimous jury verdict and not a lesser-included offense instruction. *Id.* at 229. ["The court of appeals held that the trial court erred in not giving a unanimity instruction to the jury as to which orifice Appellant penetrated with his sexual organ."] Although the jury charge allowed the jury to convict "based on any one of the four theories alleged in the amended single-count indictment: (1) contact-anus, (2) penetration-anus, (3) contact-sexual organ, and (4) penetration-sexual organ", (*Id.* at 231), the only evidence that French may have contacted or penetrated the child's sexual organ was when the child mentioned it, but then quickly corrected herself and said it was only her anus that he penetrated. *Id*. at 237. The state did not mention convicting French for genital-to-genital contact or penetration during closing argument. *Id*. at 238. Second, the evidence was overwhelming that French only penetrated the child's anus with his sexual organ. It is in this context, that this Court noted, "And for his part, Appellant offered no defense specifically tailored to suggest that he only contacted and/or penetrated J.F.'s sexual organ and not her anus." *Id*. Thus, while Williams must establish more than theoretical harm, this one line of dicta from *French* is not instructive in this case.

The state also relies on one portion in *Braughton* to argue "there is 'no realistic possibility that the jury would have opted to convict' Williams of a lesser offense,

mainly because Williams never during the presentation of evidence or argument presented them with that theory. *Braughton*, 569 S.W.3d at 617." *State's Brief* at 27. This argument presumes that counsel would not have argued for a lesser-included offense had the instruction been given—an argument that is lacking any reason or merit. Further, this argument also requires a defendant to argue for a lesser included offense when that instruction is not even before the jury.[11]

But, *Braughton* is also distinguishable from Williams' case. Braughton was charged with murder and although the jury was charged on the lesser-included offense of manslaughter, it rejected the charge and convicted him of murder. The complaint on appeal was that the judge denied Appellant's request for the lesser-included offense instruction of felony deadly conduct—a lesser offense of manslaughter. Considering the jury had rejected the intervening lesser-included instruction of manslaughter, the jury charge instructions did not weigh in favor of finding harm. *Braughton v. State*, 569 S.W.3d at 615. And, during closing arguments, counsel argued that his client did intentionally shoot the victim but acted in self-defense—another issue the jury rejected. Under these facts, the court found that there was no realistic probability that the jury—who already rejected self-defense and manslaughter—would have found Braughton guilty of an even lesser

[11] It would defy common sense, and possibly raise concerns of ineffective assistance of counsel, for an attorney to advocate that his client is guilty of an offense not before the jury. This argument actually emphasizes why there is harm—arguing that your client is only guilty of the lesser offense would still put the jury in a position to either find him guilty of the greater offense or risk acquitting a defendant they believed was guilty of something.

offense of deadly conduct. *Id* at 617. The conclusion reached in *Braughton* was heavily fact dependent and these facts are not present in Williams' case.

Based on *Almanza,* Williams was required to show "some harm". The record does not establish mere theoretical harm, but it establishes that Williams suffered actual harm. Accordingly, the state's Ground Three is without merit and the Fourth Court of Appeals' opinion reversing the conviction and remanding for a new trial should be affirmed.

PRAYER

Wherefore, premises considered, Williams prays this Court denies each of the state's grounds of error and affirms the lower court of appeals decision. Alternatively, if this Court does grant state's grounds one, two or three, this case should be remanded to the lower court so that it may conduct a harm review and consider Williams' remaining twenty-two points of error.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was electronically sent to Nathan Morey, nathan.morey@bexar.org, Assistant District Attorney and to the State Prosecuting Attorney, Stacey Soule, at Stacey.Soule@SPA.texas.gov on November 20, 2019.

/s/Dayna L. Jones
DAYNA L. JONES

CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4, I certify that, according to Microsoft Word's word count, this document contains **9615** words.

/s/Dayna L. Jones
DAYNA L. JONES